



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 31286116

Date: JUN. 18, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a soccer (football) player, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner satisfied the initial evidentiary requirements for this classification but did not establish, as required, that he has sustained national or international acclaim and is among the small percentage at the very top of his field. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

**I. LAW**

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the [noncitizen] has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the [noncitizen] seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the [noncitizen's] entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

## II. ANALYSIS

The Petitioner is a former professional football player who has played with the [REDACTED] as well as multiple first division football clubs in Chile, Argentina, and Spain.<sup>1</sup> He played in the 2014 [REDACTED] During his career he has played on teams winning the [REDACTED] (2012/2013 and 2015/2016), the [REDACTED] (2015), the [REDACTED] (2015), and the [REDACTED] (2011).

### A. Evidentiary Criteria

As the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must demonstrate that he meets the initial evidence requirements by satisfying at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claimed that he could meet four of these criteria, and the Director agreed. Specifically, the Director concluded that the Petitioner satisfied the criteria related to lesser nationally or internationally recognized awards, memberships in associations that require outstanding achievements, published materials in major media, and performance in a leading or critical role for organizations that have a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), and (viii).

Because the Petitioner demonstrated that he met the initial evidence requirements, the Director proceeded to a final merits determination. In a final merits determination, the Director must analyze all of a petitioner’s accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. As noted above, in a final merits determination, the Director looks at whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small

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<sup>1</sup> The record reflects that the Petitioner retired from professional football in 2023.

percentage at the very top of the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20.<sup>2</sup>

## B. Final Merits Determination

The Director concluded that the record, as a whole, did not establish that the Petitioner garnered sustained national or international acclaim and that he has risen to that small percentage at the very top of the field of endeavor. The Director noted that the majority of the Petitioner's evidence of national or international acclaim focused on his career from 2011 to 2015, but he did not show that this acclaim was sustained. The Director further noted that the record does not establish that the Petitioner consistently received major media coverage commensurate with sustained national or international acclaim, outside of his achievements from 2011 to 2015, or that the media coverage he received from 2011 to 2015 "reflects a 'career of acclaimed work in the field.'"

In determining whether a petitioner has enjoyed sustained national or international acclaim, we consider that such acclaim must be maintained. *See* 6 *USCIS Policy Manual* F.2(A)(1), (stating that such acclaim must be maintained and providing Black's Law Dictionary definition of "sustain" is "to support or maintain, especially over a long period of time . . . To persist in making (an effort) over a long period of time").

On appeal, the Petitioner asserts that the Director conducted "an overly subjective analysis with inconsistent conclusions," and disregarded evidence. Specifically, the Petitioner states that the Director disregarded evidence of his receipt of the 2012 [redacted] award from the Chilean Football Federation, his membership in the Chilean Football Federation and on the [redacted] and his leadership role with the [redacted] and two other first division teams. The Petitioner asserts that the Director's focus on "consistency of media coverage" was incorrect because "sustained media coverage does not necessarily equate to continuous coverage but rather reflects the ongoing interest and recognition garnered during key milestones." In support of his claim to be at the "very top of the field," the Petitioner submits additional recommendation and support letters, and a document titled "Work Model: Soccer for Everyone."

The Petitioner first asserts that the Director did not consider his membership in the Chilean Football Federation or on the [redacted] as evidence of his outstanding achievements. However, the Director specifically mentioned the Petitioner's membership on the [redacted] in several places. She concluded that he had established membership in an association which requires outstanding achievements, and that he performed in a leading or critical role for an organization with a distinguished reputation. She also considered this membership in her final merits determination analysis.

The record includes evidence that the Petitioner was a member of the Chilean Football Federation for various periods from July 1999 to November 2022, based on his role as a football player for first division teams. However, the record does not include information about the criteria for membership to support that this demonstrates the Petitioner's sustained acclaim. The record does not demonstrate that membership in the Chilean Football Federation is based on an outstanding achievement beyond

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<sup>2</sup> *See also* 6 *USCIS Policy Manual* F.2(B)(2), <https://www.uscis.gov/policymanual>.

being a player for a Chilean football club. Nor does it demonstrate that membership requires sustained acclaim over any period of time.

The Petitioner references a letter from [redacted] of the Chilean Football Association, dated April 4, 2023. The letter lists the Petitioner's sporting achievements from 2011 to 2016, his receipt of the [redacted] award in 2012, and states that he "was a fundamental part of the squad that in 2015 won the [redacted] for the Chilean Federation." The letter from Mr. [redacted] does not provide other details about membership criteria. Nor does the letter establish the Petitioner's sustained national or international acclaim. Rather, the letter praises the Petitioner's achievements as a football player for specific events and for a specific period of time.

The Petitioner next asserts that the Director did not consider his 2012 [redacted] award in analyzing his sustained acclaim. In her decision, the Director specifically discusses the [redacted] award, stating, "While the award reflects institutional recognition for excellence, it does not reflect national or international recognition for excellence in the field. The record does not contain any evidence to indicate that this award is recognized beyond the ... institution on a national or international level."

On appeal, the Petitioner submits a letter dated October 10, 2023, from [redacted] director of [redacted], in support of his assertion that the [redacted] award demonstrates sustained acclaim. Mr. [redacted] states that the Petitioner "is recognized for his outstanding career in past editions of the [redacted] especially in 2011 where he was captain and key member in obtaining the title." The letter does not mention the [redacted] award. Other evidence in the record describes the [redacted] award as "recognition of the best footballer of the year." The Petitioner does not explain how having received this award once in 2012 demonstrates his sustained acclaim.

The Petitioner also asserts that the Director did not give full consideration to the Petitioner's roles with various football teams in supporting his sustained national and international acclaim. In her decision, the Director acknowledged the Petitioner's roles with each football team and determined that the record did not demonstrate "that the Petitioner contributed in a way that is of significant importance to the outcome of [the teams'] activities." In analyzing the final merits, the Director determined that the record did not establish "that these teams were among those achieving success at the highest levels of the competition, or that [the Petitioner's] individual performance elevated him to the same status as athletes successfully competing at the highest international level."

In support of his assertion that his role as a player on several football teams demonstrates his sustained acclaim, the Petitioner references a letter dated March 15, 2023, from [redacted] Mr. [redacted] states that he has been technical director of professional football at various football clubs from 1996 to 2019, and of the [redacted] from 2021 to 2022. The letter states that the Petitioner is a "great professional and an excellent person." However, the letter does not specifically address the Petitioner's acclaim as a football player or discuss the Petitioner's roles with any of teams. Further, based on the dates Mr. [redacted] states that he worked with each football club, it appears that he only worked with the Petitioner for one year, from 2014 to 2015, while the Petitioner played for [redacted]

On appeal, the Petitioner submits two additional letters of recommendation. A letter dated November 29, 2023, from [ ] head coach of [ ] in Major League Soccer, praises the Petitioner as a skilled player. An unsigned letter dated November 7, 2023, from [ ] former President of the [ ] also praises the Petitioner's talent and career as a professional football player.<sup>3</sup> However, the Petitioner does not explain how either letter demonstrates his sustained acclaim. The letter from Mr. [ ] mentions the Petitioner's specific achievements in 2015 and 2016 but does not address his achievements outside of this time frame. The letter from former President [ ] does not discuss how the Petitioner maintained his acclaim over any period of time.

The Petitioner also submits a document titled "Work Model: Soccer for Everyone," outlining an educational model for teaching football. The document is undated and does not identify its author. The Petitioner does not reference this document in his brief on appeal, nor does he explain the probative value of this document in demonstrating his sustained acclaim.

As noted above, in determining whether a petitioner has enjoyed sustained national or international acclaim, we consider that such acclaim must be maintained. Upon review of the totality of the evidence, we agree with the Director that the Petitioner here has not demonstrated sustained national or international acclaim to demonstrate that he is among the small percentage at the very top of the field of endeavor and has not established eligibility as an individual of extraordinary ability.<sup>4</sup>

### III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the recognition of his work is indicative of the required sustained national or international acclaim required by section 203(b)(1)(A) of the Act or demonstrates a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). Moreover, the record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

**ORDER:** The appeal is dismissed.

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<sup>3</sup> The record includes a certified English translation of this letter, as well as the original in Spanish. The original letter in Spanish does not contain any signature. Additionally, the "Certificate of Translation" attesting to the translator's fluency in Spanish and English is dated May 26, 2023, almost five months before the date of the letter. The Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

<sup>4</sup> As the Petitioner has not established his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not consider whether he will continue to work in his area of extraordinary ability under section 203(b)(1)(A)(ii) of the Act. Accordingly, we decline to reach and hereby reserve this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).